

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cablevision Systems Corporation's)	CSR-7078-Z
Request for Waiver of Section 76.1204(a)(1))	
of the Commission's Rules)	
)	
Implementation of Section 304 of the)	
Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of)	
Navigation Devices)	
)	

APPLICATION FOR REVIEW

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SUMMARY

The Consumer Electronics Association (“CEA”) seeks full Commission review of the Media Bureau’s Order granting Cablevision Systems Corporation (“Cablevision”) a temporary extension of its waiver of Section 76.1204(a)(1) of the Commission’s rules. As a condition of the waiver grant, the Order requires Cablevision to deploy a purportedly downloadable security system about which the Bureau disclaims any specific knowledge. The Bureau explicitly declines to pass on whether this “solution” would be compliant with the regulation section from which a waiver is sought, yet it *orders* Cablevision to comply with an implementation schedule for this same technology. The Bureau further acknowledges that the record in this proceeding lacks sufficient information about the ordered technology for CEA or anyone else to provide the FCC with an informed comment.

The Bureau’s Order, therefore, violates the Administrative Procedure Act and is unsound policy. Because the Bureau ignored its obligations to seek public comment and overstepped its authority by adopting new substantive regulations, CEA respectfully requests the Commission to reverse and remand.

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APPLICATION FOR REVIEW

The Consumer Electronics Association (“CEA”) files this application for review of the Media Bureau’s (“the Bureau”) Order granting Cablevision Systems Corporation (“Cablevision”) a temporary extension of its waiver of Section 76.1204(a)(1) of the Commission’s rules to allow Cablevision to use its SmartCard solution until December 31, 2010.¹ CEA files this application pursuant to Section 1.115 of the Commission’s rules² and asks that the Commission review and reverse the Order.

With its Order, the Bureau ordered Cablevision to adhere to an implementation schedule for a purportedly downloadable security system as to which the Bureau:

¹ *In the Matter of Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, CSR-7078-Z, CS Docket No. 97-80 at ¶ 11 (rel. Jan. 16, 2009) (“Order”).

² 47 C.F.R. § 1.115.

- Admitted that it has *not* been provided with “specific details of its downloadable security solution”;
- Specifically declined to pass on whether this “solution” would be compliant with the regulation section from which a waiver is sought (or, if not, whether a further waiver would be considered); and
- Imposed on Cablevision a technology mandate that is regulatory in nature but has never been subject to public comment.

Unless the Commission reviews and reverses or modifies this Order, the Media Bureau Order will have required Cablevision to implement a “downloadable security” technology that has never been publicly and specifically described or commented upon, and on whose regulatory validity the Bureau has declined to pass. In so doing, the Bureau has ignored its obligations to seek public comment and overstepped its authority by adopting new substantive regulations. The Bureau has placed Cablevision in the position of being required to follow a compliance plan based on a mandate that the Commission had no hand in adopting. Inevitably, having implemented this system under a Bureau order, Cablevision would likely challenge any later Commission determination that this system does not comply with Section 76.1204(a)(1). If successful, such a challenge would effectively limit the Commission’s ability to determine whether any particular downloadable security technology comports with section 629 of the Communications Act.

The Bureau’s Order violates the Administrative Procedure Act (“APA”) by adopting a substantive rule change without an opportunity for public comment, and without articulating a reasoned basis for its decision.³ Lacking these necessary

³ As the Order notes, CEA did oppose the Cablevision request for extension of waiver, but on only a failsafe basis after having been unable to determine whether the Bureau intended to publish it for comment. *In the Matter of Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial*

safeguards, the Order is procedurally invalid and, if sustained by the Commission, would not be entitled to deference by a court. Based on a reading of the Order, members of the public cannot reasonably discern whether the Cablevision system can be a basis for a nationally portable security system like the CableCARD, or even understand what the Bureau's, or the Commission's, expectations are in such respect. While the Bureau expressly declines to pass judgment on the merits of the Cablevision system, its compliance plan requires deployment of the downloadable security system, suggesting to Cablevision and the public that their system should and may replace CableCARD.

CEA supports the development of a single national downloadable security interface that would equate to the functionality of, and eventually supplant, today's CableCARD. To this end, CEA previously has provided the Commission with a list of the attributes it views as necessary to comply with Section 76.1204(a)(1). Cablevision's proposed system may or may not satisfy these attributes. But neither the Order nor the record in this proceeding provides sufficient information to allow CEA or the public to know whether this is the case, or what the Commission views as compliant.

CEA respectfully requests the Commission to review and reverse the Bureau's Order. The present record is not sufficient for either the Bureau or the Commission to establish public expectations or cable industry guidelines as to "downloadable security." It provides no helpful guidance for industry toward the establishment of a uniform set of expectations for a downloadable security system that, like the CableCARD, would support competitive entry products on a national, and nationally portable, basis. Worse,

Availability of Navigation Devices, CS Docket No. 97-80, CSR-7078-Z, Opposition of CEA to Cablevision Systems Corporation's Request for Extension of Waiver of 47 C.F.R. § 76.1204(a)(1) (Dec. 15, 2008). CEA thus was unable to divine that the Bureau intended to treat this application as if the subject of a rulemaking, or to anticipate the subjects on which quasi-rules would be promulgated.

the Bureau's opinion and ordering clauses establish a basis for Cablevision to assert to the Commission and to a reviewing court that its downloadable security system meets the requirements of Section 629.⁴

Whether or not the Commission wishes to grant Cablevision additional time to conform its security system to national standards, the Bureau's waiver determination should be reversed to the extent that it enables Cablevision to rely in the future on a particular technical regime that has not been subject to public notice and comment as required by the APA. The Commission should not allow the Bureau to order cable operators to implement technical systems when neither the Bureau nor the Commission has assessed whether the system complies with Section 76.1204(a)(1) or the other Commission regulations with respect to supporting competitively available products.

I. THE BUREAU CHANGED THE RATIONALE FOR ITS PREVIOUS GRANT OF AN EXTENSION TO CABLEVISION WITHOUT SEEKING PUBLIC COMMENT OR MAKING ANY FACTUAL INQUIRY OR DETERMINATION.

Without public notice or soliciting public comment, the Bureau extended Cablevision's waiver on a basis dramatically different from the one on which it was granted originally. The Bureau granted Cablevision a two-year waiver as to its "Smartcard" system, but found explicitly that the Smartcard system did *not* provide for common reliance as required by Section 76.1204(a)(1) of the Commission's rules. The basis of the original waiver grant was to allow Cablevision, which had made a good faith but insufficient effort to find a separable security solution, additional time to find a *compliant* solution.

⁴ 47 U.S.C. § 549.

Now, the Bureau has extended Cablevision's waiver for two years based on a Cablevision commitment to deploy a purportedly compliant system, without asking for public comment, without requiring any public description of the Cablevision system under development, and without making any determination that the system *will in fact be compliant with Commission regulations*. Indeed, the Bureau has explicitly disclaimed having either the information on which to base such a finding, or the intention of making any such finding:

“Cablevision did not request the Commission to approve, nor did it provide specific details of its downloadable security solution. Accordingly, the Commission will not address this matter in the context of this order.”⁵

If the Bureau had stopped here, and simply reiterated that it was extending the previously granted waiver on the previous rationale of good but insufficient intentions, CEA might have applied for Commission review on the basis that Cablevision had already had enough time, with its two-year waiver, to move to a compliant system. The Bureau, however, did not stop there: Apparently in reliance on a Cablevision offer, the Bureau has *mandated* the implementation of a technical system of which it admittedly has insufficient facts and on which admittedly no informed public comment has been sought or received.

Thus, without seeking public comment, the Bureau has changed the rationale for the previous waiver: from granting more time to move to some compliant system, to ordering Cablevision to move to a system as to which the Bureau admits that it has insufficient information to determine compliance.

⁵ Order at ¶ 9.

II. THE BUREAU'S ORDER HAS THE PURPORTED FORCE OF REGULATION WITHOUT THE NECESSARY PUBLIC NOTICE AND COMMENT, OR ANY RELEVANT FINDINGS BY THE BUREAU.

CEA filed an opposition to the Cablevision request. CEA reviewed why the Bureau had previously and correctly rejected the “smartcard” approach, and noted that the same objections applied to all “downloadable” systems that had been publicly described in any Commission filings:

“[U]nlike the more widespread CableCARD technology, a ‘smartcard’ is *not* a physically separate conditional access system because a major component of the conditional access hardware remains in the navigation device, and not on the card. Therefore, the smartcard system remains tied to a particular cable network architecture and does not achieve the Commission’s goals of portability and a level playing field for competitive devices. *** Now, Cablevision has filed, essentially, a request for a permanent extension of its temporary waiver, based on a promise to deploy, in the future, an unspecified system that, based on any and all available information, *also* does not constitute Common Reliance; would *also* avoid CableCARD reliance; and is now described (without specifics so as to be open to public comment) as ‘downloadable.’ In extensive filings in this Docket, CEA has demonstrated that the so-called ‘downloadable’ systems of which CEA is aware would in fact require *embedded, proprietary chips* to be built into any device that would seek attachment to the system. Thus, for the same reason as was identified by the Bureau earlier in this proceeding with respect to ‘smartcards,’ such systems do not in reality achieve common reliance, and do not aid in fulfilling Congress’s mandate in Section 304 of the 1996 Telecommunications Act.”⁶

In the Order, the Bureau dealt with CEA’s objection by pointing out that “CEA does not provide specific objections and even acknowledges that it does not have specific information on this new downloadable system.”⁷ Rather than go on to cite any such information, however, so as to show that CEA’s objection was inapt, the Bureau went on

⁶ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7078-Z, Opposition of CEA to Cablevision Systems Corporation’s Request for Extension of Waiver of 47 C.F.R. § 76.1204(a)(1) at 2 - 3 (Dec. 15, 2008) (emphasis in original, footnotes omitted).

⁷ Order at ¶ 5.

to say that the Commission *also* lacks any such information – and that Cablevision did not provide any:

“Cablevision did not request the Commission to approve, nor did it provide specific details of its downloadable security solution. Accordingly, the Commission will not address this matter in the context of this order.”⁸

Despite “not addressing” whether Cablevision’s planned system complies with Commission regulations, the Bureau then proceeded to *order* Cablevision to implement this very system, subject to penalty for noncompliance:

IT IS FURTHER ORDERED that Cablevision Systems Corporation **SHALL FILE** with the Media Bureau an affidavit confirming its intent to complete the required actions set forth in the Attachment to this order 15 days before each deadline and an affidavit confirming completion of the required action within 15 days after each deadline. In the event that Cablevision Systems Corporation does not comply with any deadline, it shall pay a penalty to the Commission of \$5,000 per day of non-compliance in addition to any forfeiture assessed for violation of the Commission’s rules.⁹

The Order’s Attachment listed six dates and metrics for mandating Cablevision to implement, in set-top boxes and commercial use, the very system whose regulatory compliance the Bureau explicitly did “not address.”

III. THE BUREAU’S ACTION HAS NO RATIONAL BASIS, IS UNSUPPORTED IN THE RECORD, AND POTENTIALLY UNDERMINES THE LAW AND THE REGULATION IT PURPORTS TO ENFORCE.

As CEA indicated in its Opposition to the Cablevision extension application, CEA has not received sufficient information to determine whether the Cablevision system can or will form the basis for a national and nationally portable conditional access system that is a true alternative to the CableCARD. The Order confirms that the Media Bureau and the public lack any such information as well. The Order, like the initial waiver grant to

⁸ Order at ¶ 9.

⁹ Order at ¶ 13.

Cablevision, proceeds from the basis that the present “Smartcard” system does *not* achieve common reliance, and the Bureau in the Order said that it could not and would not address whether the planned Cablevision system does so. Accordingly, there is no factual basis and no rational basis for the Bureau to have tied its extension of the Cablevision waiver to Cablevision’s plans to implement this undefined and legally ambiguous “downloadable” system.

The entire basis of the Commission’s regulatory decision-making lies in receiving public comment, building a record, and issuing regulations.¹⁰ In this matter, the Bureau has done none of these things – but has imposed a technology mandate on Cablevision nevertheless. While it is clear that the Media Bureau decision lacks value as legal precedent,¹¹ CEA members and other potential entrants have a clear interest, under Section 629, in understanding what it is the Media Bureau has ordered, and how it will affect competitive entrants’ right to compete, as ordered by the Congress and implemented by the Commission. Indeed, the Bureau explicitly acknowledges these rights in the Attachment to the Order:

“6. All new STBs deployed in Cablevision’s footprint must incorporate downloadable security that commonly relies on an *identical* separated security element that commercially available consumer electronics devices may rely upon [by December 31, 2010].”

Unfortunately, the Bureau’s use of the word “identical” lacks a discernable external reference. The reader is left wondering, *identical to what?* Possibly,

¹⁰ The purpose of the notice and comment requirement is to improve the quality of rulemaking. *Small Refiner Lead Phase-Down Task Force v. E.P.A.*, 705 F.2d 506, 549 (D.C. Cir. 1983). Because the Commission cannot make regulations without a meaningful opportunity for public comment, final rules must be a “logical outgrowth” of the notice of proposed rulemaking. *Small Refiner, id*; *Shell Oil Co. v. E.P.A.*, 950 F.2d 741, 750-51 (D.C.Cir. 1991).

¹¹ *Comcast Corp. v. FCC*, 526 F.3d 763, 770 (2008).

Cablevision and the Media Bureau have some idea what this means¹² but they have not shared it publicly. CEA and its members can only speculate about what “identical” means.

Effectively, by this Order the Bureau has issued a mandate with the force of a regulation, while admitting and in fact proclaiming that it did not have enough information to justify such action if it had been taken by the full Commission. The Commission cannot let this stand. Under the APA, the Commission may not, as a gloss to an existing regulation, add a requirement that it otherwise would have been required to consider in the context of a rulemaking. *See, e.g., Bonessa v. U.S. Steel Corp.*, 884 F.2d 726, 731-32, 734 (3d Cir.1989) (“If the permanent regulations intended to extinguish living miners’ entitlement to benefits ... , then the Department would have promulgated this intention specifically.”) Because the Commission cannot make regulations without a meaningful opportunity for public comment, final rules must be a “logical outgrowth” of the notice of proposed rulemaking. *Small Refiner, id; Shell Oil, id.*

IV. THE BUREAU’S FINDINGS AND REQUIREMENTS WITH RESPECT TO CABLEVISION’S INTENDED VERSION OF “DOWNLOADABLE SECURITY” ARE NOT SUFFICIENTLY CLEAR FOR CABLEVISION, CEA, OR ANYONE ELSE TO UNDERSTAND WHAT WILL HAPPEN AT THE END OF THE PERIOD FOR WHICH THE WAIVER HAS BEEN EXTENDED.

CEA’s appeal of the Bureau’s Order should not be interpreted as a criticism or condemnation of the Cablevision system as a potential platform for a downloadable

¹² In Cablevision’s Reply to the CEA Opposition, Cablevision claims that it “has already provided more technical detail than was available to the Commission in prior instances in which it has granted extensions for the deployment of downloadable security.” *In the Matter of Cablevision Systems Corporation’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7078-Z, Cablevision’s Reply to Opposition of CEA to Request for Extension of Waiver at 3 (Dec. 23, 2008). What Cablevision seeks here, however, is an extension followed by a determination that its system is compliant. The Bureau, on the one hand, appears to be acting on this information, while on the other hand saying that it and the public lack enough information to make any such determination.

security interface that, like the CableCARD, would be nationally available and portable. As the Bureau has observed, neither CEA nor the Commission has sufficient information to pass judgment on the merits of the Cablevision system. Rather, CEA objects to the Bureau's having proceeded to refer to, and even mandate, this system as an *assumed basis* for compliance in two years, at a time when the Bureau has not requested public comment on this issue, and has itself refrained from making any such determination.

CEA has on several occasions advised the Commission of the minimum requirements that any "downloadable" system must have to equate to the functionality of a CableCARD and to potentially supplant the CableCARD in use.¹³ Almost two years ago, CEA compiled and listed, in a filing with the Commission, what it viewed as the necessary attributes:

"As the Commission now deals with a veritable avalanche of local system requests for waivers or for, essentially, a declaration of compliance ... , the Commission should clarify that, *in addition* to being truly and essentially "downloadable," a representation as to a "downloadable" security system should prove compliance with the following attributes – *all* of which are provided for in the current CableCARDregime approved in October 2003:

- (1) a national interface so that a DTV television receiver or competitive product can be nationally marketed and moved by the consumer from one local system to another,
- (2) manufacturer input into the specification and any planned changes, and review prior to final adoption,
- (3) reasonable host device implementation specifications and support for competitive home networks,

¹³ See, e.g., *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7131-Z, Letter from Julie M. Kearney, Sr. Dir. and Regulatory Counsel, CEA to Marlene Dortch, Sec. FCC, Re: *Ex Parte* Presentation, CS Docket No. 97-80, CSR-7131-Z (Apr. 24, 2006) ("CEA ex parte letter"); *In the Matter of Evolution Broadband, LLC Petition for Waiver of 47 C. F. R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7902-Z, Opposition of the Consumer Electronics Association to Evolution Broadband, LLC Petition for Waiver of 47 C. F. R. § 76.1204(a)(1) (Jun. 16, 2008).

- (4) self-certification of implementation,
- (5) support of competitive home networks,
- (6) true renewability to the software, including updates to the host end of the interface via firmware,
- (7) licensing terms that comport with FCC regulations limiting MSO control over devices to assurance against theft of service and harm to the cable network, and
- (8) compliance with all other FCC regulations pertaining to cable systems and competitive availability of devices.

These attributes are far from radical – as noted, all of them are met by the existing CableCARD, *if* adequately supported under any reasonable interpretation of the existing DFAST license for CableCARD technology. ***The Commission should insist that any successor to the CableCARD meet these same requirements.***¹⁴

In the same filing, CEA explained why these attributes are essential:

“Taken as a whole, ... what the Commission is now being told by the cable industry ... is that (1) all standard-setting needs to be centralized in CableLabs, to assure interoperability, compatibility, and efficiency, ***but*** (2) where it suits the cable industry to avoid effective device competition, standard-setting may be entirely *atomized and localized* so as to make it *impossible* for an entrant to field a competitive retail product, ***or*** to build a competitive platform into nationally distributed DTV television receivers, so as finally to eliminate the necessity of obtaining a specific converter box from the local operator. *** ***This would bring us back to where the Congress started, in 1992 and 1996.***¹⁵

For the Commission to let stand a Media Bureau Order that, without public notice or comment, effectively anoints any particular system as compliant, without any fact-finding or decision as to whether that system really *is* compliant, would be to read Section 629 out of the Communications Act.

¹⁴ CEA ex parte letter at 9-10 (emphasis in original, internal citations omitted).

¹⁵ *Id.* at 7 (emphasis in original).

V. CABLEVISION WOULD BE ABLE TO CLAIM RELIANCE ON THE COMMISSION'S MANDATE TO DEPLOY ITS SYSTEM EVEN IF THE COMMISSION LATER DETERMINED THAT IT DOES NOT MEET THE REQUIREMENTS OF COMMON RELIANCE.

CEA, of course, reserves the right to challenge Cablevision's system, if deployed, as not providing common reliance comparable to the nationally portable functionality of CableCARDS, and not in compliance with Section 76.1204(a)(1). However, in two years, the Bureau would be hard-pressed to ignore the fact that Cablevision had not only relied on a specific Bureau requirement, but was under an "FCC" Order to implement this system. Moreover, Cablevision had indicated in its extension application that it had *no intention* of again applying for any waiver – that, rather, at the end of two years it will consider its system to be "compliant" with Commission regulations. Despite the Bureau having punted on any such determination, there is no assurance that Cablevision in two years will even return to seek a waiver. Rather, if challenged Cablevision may argue (to the Commission or in court) that since its system was deployed under a specific "FCC" order and timetable, it "must" be compliant. CEA and other concerned members of the public would then have the burden of seeking Enforcement Bureau action against a company that has specifically followed, to the letter, an "FCC" order.

These are all reasons why the Commission cannot let this Order stand. Neither Cablevision nor competitive entrants can apply or refer to this Order in any reasoned way as a step toward true competitive entry. In the meantime, two more years will have passed.

VI. THE BUREAU'S ORDER SHOULD BE REMANDED WITH INSTRUCTIONS TO DETERMINE WHETHER CABLEVISION'S "DOWNLOADABLE" SYSTEM WILL PROVIDE A NATIONALLY PORTABLE STANDARD FOR ATTACHMENT AND ENTRY COMPARABLE TO THAT PROVIDED BY THE CABLECARD.

CEA's concern over the Bureau or the Commission accepting isolated, local, non-portable solutions as tantamount to common reliance or CableCARD functionality has been expressed on several occasions. It was summarized for the Commission last year:

"The chipsets and firmware necessary for navigation devices to implement "downloadable" security are not themselves "downloadable." Rather, the electronic interface for each system would have to be separately engineered and built into the hardware and software of any television or other navigation device. If there can be any number of such "downloadable" systems – indeed, if more than one – any advantage of separable security would be lost, as there would still be no common security interface. The navigation devices would be no more, and perhaps less, nationally portable than are present integrated-security set-top boxes. And, as in the case of present set-top boxes, a different and perhaps incompatible license would be required from each system vendor. Thus, despite all of its efforts to assure competitive navigation devices via separable security, a national patchwork of different "downloadable" systems would put the Commission back where it started a decade ago – with individual, proprietary security solutions posing a fundamental obstacle to competitive entry".¹⁶

Fundamentally, a purely "local" solution to common reliance is no solution at all. Yet from the Bureau's Order and the isolated use of the word "identical," neither CEA nor anyone else will be in a position to tell whether the Cablevision system represents progress toward competitive entry. In Part IV above, CEA has reiterated its view of the metrics that should determine whether this or any system offers common reliance. Immediately above, CEA explains that localized technical requirements, even if freely

¹⁶ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7218-Z-CSR-7222-Z, CSR-7227-Z, Comments of the CEA on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) at 3 (July 5, 2007) (emphasis in original). Indeed, if each cable operator were to use a different "downloadable" technology, then it is difficult if not impossible to see how a competitive entrant could create any business model except selling devices directly to cable operators for lease to consumers.

and openly licensed, are not adequate to assure the support of competitive entry devices unless, like the CableCARD interface, the interface provides a downloadable platform that will function on a national and nationally portable basis in a consumer electronics product without requiring, in the CE product, different *embedded* hardware or firmware according to the system on which the consumer electronics product is deployed.

If the Bureau were to grant the Cablevision waiver on the basis of progress toward a specific technical implementation, it should have sought public comment, from CEA and others, as to objectives and means. It should also have gathered, and placed on the records, sufficient facts for informed commentary. For this purpose the Bureau might have asked for inter-industry or multi-industry discussions, as it has on past occasions.¹⁷ Because the Bureau did none of these things, and because its Order exceeded its delegated authority, the Commission should reverse and remand.

As is noted above, CEA is sensitive to Cablevision's need and expectation to rely on clear guidance from the Commission. Accordingly, CEA would not oppose the grant of an appropriate waiver to Cablevision while the Bureau and the Commission undertake the due diligence to establish metrics for compliance. What is essential, at this time, is that the Commission reverse this Order's establishment of *de facto* regulations about a system as to which the Bureau has gathered insufficient facts and invited no public comment.

¹⁷ CEA, of course, would cooperate fully with any initiative, such as a committee or commission review, undertaken, led, or convened by the FCC in order to arrive at a result that serves the reasonable real-world requirements of both the cable industry and competitive entrants. By this appeal, CEA does not mean to exclude the possibility that the technology that Cablevision wishes to deploy could contribute to or serve as a basis for such an achievement.

Respectfully submitted,

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A handwritten signature in cursive script, reading "James W. Hedlund", is written over a horizontal line.

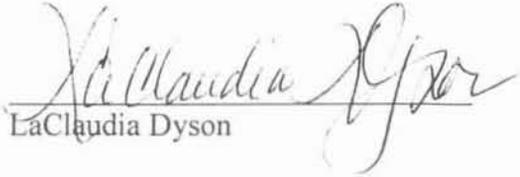
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Dated: February 17, 2009

CERTIFICATE OF SERVICE

I do hereby certify that on February 17, 2009, I caused a true and correct copy of the foregoing served via overnight mail, on the following:

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